

Application No. 10/728,736
Amendment dated December 6, 2005
Reply to Office Action of September 6, 2005

REMARKS / ARGUMENTS

The specification is objected to as containing informalities in the paragraph beginning at page 7, line 13. The specification has been amended above to correct these informalities. It is respectfully submitted that the amendments to the specification traverse the instant objection.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. Specifically, it is asserted that the claim phrase "tension strap lever" lacks a proper antecedent basis in the specification. Applicant respectfully traverses the objection for the reasons set forth below.

Applicant expressly recites an element termed "the tension strap lever" numerous times throughout pages 3 and 4 of the "SUMMARY OF THE INVENTION" section of the specification. In addition, applicant expressly recites an element termed "the upper tension strap lever" throughout the "DESCRIPTION OF PREFERRED EMBODIMENTS" section of the specification. The first recitation of the term in this section is at page 13 and is repeated multiple times thereafter. The part associated with this term is also identified by reference character 156 in the drawings. This term differs from the claim term solely by omission of one adjective "upper". Nevertheless, it is submitted that the meaning of the claim term "tension strap lever" is clearly apparent from the description of the terms "tension strap lever" and "upper tension strap lever" in the specification and by reference to the part associated with the term in the drawings. Furthermore, dependent claim 8 clearly shows the relation of the terms, i.e., "upper tension strap lever" and "tension strap lever." This is all that is legally required of the specification.

As stated in MPEP §608.01(o), "The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear

Application No. 10/728,736
Amendment dated December 6, 2005
Reply to Office Action of September 6, 2005

disclosure as to its import; and in mechanical cases it should be identified in the descriptive portion of the specification by reference to the drawing, designating the part or parts therein to which the term applies."

The above-quoted statement of the MPEP does not preclude the applicant's right to claim the invention beyond the disclosed preferred embodiment where the scope of the invention is clearly apparent from the specification as filed. In the present case, applicant shows a part in the drawings which is identified as an "upper tension strap lever 156" and describes the terms "tension strap lever" and its narrower preferred embodiment "upper tension strap lever" in the specification. One skilled in the art reading the present specification and viewing the drawing would unequivocally understand the meaning of the claim term "tension strap lever" and be able to relate this term back to the specification and drawings. For this reason, withdrawal of the objection is respectfully requested.

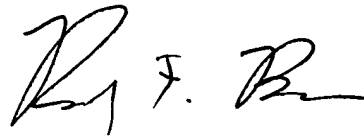
Claims 1-19 were pending in the above-captioned patent application at the time of the Office Action. The Office Action allows claims 11-19 and provisionally rejects claims 1-3, 5-7 and 9 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-7 and 9 of copending application number 10/420,344. Applicant agrees with the statement at page 3 of the Office Action that a "knee brace" is an "orthosis", but respectfully disagrees with the statement at the same page that when two elements are connected, they necessarily engage one another. An element can be connected without being engaged since connection can be effected by an intervening element. In any case, applicant acquiesces to the assertion that the conflicting claims are not patentably distinct from one another based on other grounds. Accordingly, Applicant encloses a terminal disclaimer to traverse the instant grounds of rejection.

Application No. 10/728,736
Amendment dated December 6, 2005
Reply to Office Action of September 6, 2005

Conclusion

In conclusion, applicant respectfully asserts that all pending claims 1-19 in the instant patent application are allowable for the reasons set forth above. Accordingly, an early notice of allowance is earnestly solicited. The Examiner is requested to call the undersigned at (858) 272-8705 for any reason that would advance the instant application to issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. F. Brown", with a stylized, cursive script.

Rodney F. Brown
Attorney for Applicant
Registration No. 30,450

3365 Baltimore Street
San Diego, California 92117
Telephone: (858) 272-8705

RFB:001P9905.P2A